

Inter-University Center for Legal Studies

In 1997, the Inter-University Center for Legal Studies was established to contribute to the global effort to deal with a broad range of topics including: human rights, ethnic, racial, and religious intolerance and violence, terrorism and war crimes. The purpose of the IUCLS is to focus on the relationship between the rule of law and various issues, monitor current and future threats to peace and security, develop response strategies, and keep effective communication between many organizations. IUCLS is a consortium of universities and has a presence as a think tank in over 35 countries.

ISBN 978-0-578-03838-4

Group Rights and International Law: A Case Study on the Sahrawi Refugees in Algeria

Group Rights and International Law

A Case Study on the Sahrawi Refugees in Algeria

NSD/CES/REGISTRATION
1997
2009 OCT 26 PM 1:33



THE MOROCCAN AMERICAN CENTER FOR POLICY

The Moroccan American Center for Policy (MACP) is a non-profit organization whose principal mission is to inform opinion makers, government officials and an interested public in the United States about political and social developments in Morocco and the role being played by the Kingdom of Morocco in broader strategic developments in North Africa, the Mediterranean, and the Middle East. It is an initiative of His Majesty King Mohammed VI that focuses on enhancing a broad range of Moroccan-US relations.

MOROCCAN AMERICAN CENTER FOR POLICY

1220 L STREET NW

SUITE 411

WASHINGTON, DC 20005

(202) 587-0855

[HTTP://WWW.MOROCCANAMERICANPOLICY.ORG](http://www.MOROCCANAMERICANPOLICY.ORG)

Copyright © 2009 by the Moroccan American Center for Policy. All rights reserved. No part of this book may be reproduced, stored or distributed without the prior written consent of the copyright holder.

ISBN 978 0 578 03838 4

Manufactured in the United States of America

Cover photograph copyright © 2009 Basil Pau

TABLE OF CONTENTS

<i>Foreword</i>	<i>iv</i>
<i>Abstract</i>	<i>v</i>
EXECUTIVE SUMMARY	1
INTRODUCTION	4
THE ORIGINS OF THE SAHRAWI REFUGEES IN ALGERIA	5
THE ORIGINS OF INTERNATIONAL REFUGEE LAW	9
SPECIFIC RIGHTS IMPORTANT FOR SAHRAWI REFUGEES IN CAMPS IN ALGERIA	13
Background	14
Juridical Status	16
Gainful Employment	18
Welfare	20
Freedom of Movement and Documentation	23
THE EVOLUTION OF REFUGEE LAW: UNHCR AND THE EXECUTIVE COMMITTEE	30
The Agenda for Protection, the Strengthening Protection Capacity Project, and the High Commissioner's Dialogue on Protection Challenges	30
Executive Committee Conclusions	33

ABSTRACT

This report is a case study of the violation of refugee rights resulting from the three decades old warehousing of Sahrawi refugees in Algeria. It includes a brief introduction to the background of the factors that generated the refugee situation, an analysis of the current deplorable state of refugees in camps near the city of Tindouf in southwestern Algeria, and an assessment of how their rights are being violated under international refugee law. Drawing on international refugee and human rights law, particularly the 1951 Convention relating to the Status of Refugees and the work of the United Nations High Commissioner for Refugees (UNHCR), it outlines both the legal rights of Sahrawi refugees and the legal responsibilities of UNHCR and the host country, Algeria. By assessing the responsibilities and shortcomings of UNHCR and Algeria in derogating from their obligations under international law, this report seeks to call international attention to the problem of refugee warehousing and to offer realistic suggestions for further international action that is urgently needed to improve the lives of the Sahrawi refugees and guarantee their rights under international refugee law.

- Establish a significant presence in the camps to ensure the protection of refugee rights, especially freedom of movement.
- Establish an intimidation-free, voluntary repatriation program for those Sahrawi refugees who wish to return to their previous homes and families in Morocco or otherwise leave the camps to settle elsewhere.
- Prevent the militarization of the camps.
- Reconstitute its humanitarian approach into a rights-based approach that bridges the gap between relief and development to ensure the realization of all refugee rights.

Likewise, under its obligations to collaborate with UNHCR, Algeria must remove all obstacles standing in the way of this rights-based approach, including its opposition to the census and documentation, its continued support for the Polisario jurisdiction over the camps, and its military cooperation with the Polisario that contributes to restrictions on freedom of movement. Sahrawi refugees must not continue to suffer for the failures of UNHCR, Algeria, and the Polisario. It is legally, morally, and financially imperative that the Sahrawi refugees in Algeria be granted all of the rights they are entitled to under international law so that they do not have to live as warehoused refugees for another 30 years.

INTRODUCTION

This report, a case study of the violation of refugee rights in the three-decades-old warehousing of Sahrawi refugees in Algeria, will provide a detailed analysis of international refugee law as it pertains to the Sahrawi refugees in camps outside the city of Tindouf in southwest Algeria. Following background information on the origins of the problem in the mid-1970s and a description of the origins of international refugee law and the Office of the United Nations High Commissioner for Refugees (UNHCR), the report will detail specific rights under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees that are most relevant. The report also will examine the continued evolution of international refugee law from 1951 to the present day. While not exhaustive, this section will provide a systematic analysis of the international instruments available to refugees and Contracting States (those that sign the various conventions) that are useful for enforcing and ensuring the international rights of refugees. Throughout this report, the significance of these rights for Sahrawi refugees will be explained using information from a wide variety of international sources.

With this background, the next section will detail the rights of refugees as civilians in order to further underscore their rights as refugees and demonstrate that a host state's responsibility is not limited to commitments under international refugee law. The final section will assess the responsibilities and shortcomings of UNHCR and Algeria in derogating from their obligations under international law, which has contributed to the current, deplorable state of the refugees in the Tindouf refugee camps. In conclusion, the report will offer suggestions for further action, in line with UNHCR's 2009 objectives for the region, and describe why international action is urgently needed to improve the lives of the Sahrawi refugees and guarantee their rights under international refugee law.

the other hand, sought to establish a more inclusive voter list that would have allowed all those Sahrawis whose tribal origins were within the area previously known as Spanish Sahara to register and vote. In advancing this position, Morocco argued that those Sahrawis who had been forced out of the territory or had fled Spanish colonial rule should not be prevented from voting on the future of the region as would their kinsmen who remained in the territory under Spanish colonial occupation. After more than eight years of seeking to resolve this registration issue between Morocco and the Polisario Front, the UN was unsuccessful and essentially abandoned the registration process.

At the time of the last registration activities in 1999, roughly 90,000 people had been registered to vote in Morocco, Mauritania, and the Algerian refugee camps with nearly 145,000 appeals still pending from those not yet successfully registered. At the repeated urging of the UNSC, the parties to the dispute have been encouraged to negotiate a political solution to the problem that would be based on a compromise between Morocco and the Polisario Front and that would protect the Sahrawis "right to self determination." In this regard, Morocco proposed in April 2007 that the territory be granted a broad autonomy for self government, but remain as a sovereign Moroccan territory. By the end of 2008, Morocco and the Polisario Front had engaged in four rounds of direct negotiations under the auspices of the UN, but were no closer to a solution. A fifth round of negotiations has yet to be scheduled. Morocco continues to pursue a compromise based on the sovereignty/autonomy formula. However, the Polisario Front continues to insist that a referendum be conducted and continues to threaten war if its demands are not met.

In the meantime, some tens of thousands of Sahrawi refugees remain warehoused in the camps in Algeria in deplorable physical and moral circumstances. A third generation of children is now being born into a seemingly hopeless problem with no prospect in sight for a solution. As this report describes, the international system has done little to protect the rights of these warehoused refugees in what has

now become – after more than three decades – one of the longest encamped refugee situations in the world today. The location of the camps in southwest Algeria imposes certain obligations on the Algerian government, which under international law is responsible for the well being of the refugees and the protection of their rights. This report will show that neither Algeria nor the Polisario Front, which claims for itself the role of "the sole legitimate representative of the Sahrawis," have fulfilled their responsibilities towards the refugees.

Chapter V: the right to administrative measures, including a right to freedom of movement, identity papers, and travel documents⁴

The African Union Refugee Convention incorporates the 1951 Convention by reference and further enshrines these rights, reiterating the importance of issuing travel documents to refugees and strengthening the principle of *non-refoulement*; essentially, that all repatriation should be on a voluntary basis. This legal regime provides the basis for the protection of refugees under international law. Along with the creation of a legal framework for refugee protection, the UN also established a refugee agency, the UNHCR.

UNHCR was created in 1950 by the UN Security Council. According to the UNHCR statute, the organization is to “assume the function of providing international protection to refugees and...[to seek] permanent solutions to the problem of refugees by facilitating the voluntary repatriation of such refugees or their assimilation within new national communities.”⁵ The organization was designed to be humanitarian and apolitical. Rather than work to eliminate the causes of refugee problems, which was deemed too political, UNHCR had a mandate to coordinate operational responses and provide legal assistance to refugees. UNHCR’s statute calls for cooperation with states and other interested parties in the following areas: admitting refugees to territories, assisting in voluntary repatriation, promoting the assimilation of refugees, and providing refugees with travel and other documents as needed.⁶ UNHCR is also tasked with resettlement and repatriation within the limits of resources placed at its disposal.

The initial mandate of UNHCR is still relevant today, as evident in the wording of its current mission statement: to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. Its primary purpose is to safeguard the rights and well being of refugees, and it seeks to reduce situations of forced placement and to consolidate the reintegration of returning refugees in their country of origin.⁷ Nevertheless, the mission of the organization has evolved in response to global developments and has re-formed in response to the changing political climate. For example, as Michael Barnett notes, “during the Cold War UN organizations routinely presented themselves as ‘apolitical’ and ‘humanitarian’ as a signal to states that they understood their place and recognized sovereignty’s canon of non-interference.”⁸ As the Cold War drew to a close, however, UN agencies became more directly involved in the domestic affairs of states in response to changing political dynamics, namely the emergence of global human rights movements and the growing significance of non-state actors. While UNHCR continued to cooperate with host governments, it began to play more of a role in protecting people regardless of sovereign borders. UNHCR became increasingly active in the areas of refugee reintegration and in addressing the root causes of refugee flight. Since those causes had changed significantly after the Cold War, UNHCR was forced to alter its approach to refugee management. The end of the Cold War also brought about a modification in the usual profile of the refugees. Some continuing interstate conflicts were no longer at the forefront of global instability. Rather, internal wars and large-scale violent civil unrest, often in illiberal states, created massive internal and external displacements of people. UNHCR has thus become increasingly involved in the protection of internally displaced persons and its humanitarian space has expanded considerably.

⁴ Convention relating to the Status of Refugees.

⁵ Statute of the Office of the United Nations High Commissioner for Refugees. UNHCR (1950) and Wolfson, Steven. “Refugees and Transitional Justice.” *Refugee Survey Quarterly* 24:4 (2005): 55-59, p. 56.

⁶ Statute of the Office of the United Nations High Commissioner for Refugees.

⁷ “Mission Statement – The United Nations Refugee Agency.” UNHCR, <<http://www.unhcr.org/publ/PUBL/4565a5742.pdf>>.

⁸ Barnett, p. 244.

consumption score at the household level showed that 15% of households were found to have poor consumption. The prevalence of global acute malnutrition was 18%, up from 8% in 2005.¹⁵ Severe acute malnutrition increased from 2% in 2005 to 5% in 2008, and the prevalence of chronic malnutrition was 32%, with 9% of those cases marked as severe. Anemia, which affects both children and women, was similarly high. The anemia rate among children was 62%, among pregnant women 54%, and among non-pregnant women 66%.¹⁶ These numbers reveal serious long-term nutritional problems in the camps in Tindouf, evidence that is substantiated by previous surveys. A micronutrient survey conducted in the camps in 2002 by UNHCR, WFP, and the Centre for International Child Health similarly revealed that the supply of food in the camps at that time was also erratic and that chronic malnutrition was rampant, often beginning at an early age and leading to rapid growth faltering throughout childhood.¹⁷ The UNHCR survey also acknowledged the lack of an onsite food distribution monitoring system, which helps explain why such food insecurity is occurring despite aid delivery. Reports by the Office of the Inspector General of both UNHCR and the WFP completed in 2005 further document decades of systematic waste, fraud, and abuse in the delivery of humanitarian assistance to the camp residents, problems which remain largely unaddressed at this writing, according to dozens of direct interviews with recent camp residents as reported in various news stories in 2008.¹⁸

In addition to these physical deprivations in the camps, Sahrawis experience a wide range of social and political abuses. According to testimony from Sahrawi refugees, they are often separated from their families, many of whom live in the Saharan provinces of Morocco, have limited freedom of movement, and limited educational and employment opportunities.¹⁹ The passage to adulthood of Sahrawi youth is often not complete, given their inability to receive a proper secondary education or employment. Cultural norms are violated due to the encampment of a previously nomadic population. The psychological impact of isolation in the desert cannot be underestimated and dependency on foreign aid has detrimental impacts on human dignity and self empowerment. From a political perspective, refugees are denied rights granted to them under international refugee law and are also subject to violations of their human rights. Based on these realities, the rights enshrined in the Convention and Protocol most significant for Sahrawi refugees are rights relating to juridical status, gainful employment, welfare, freedom of movement, and documentation.

Juridical Status

While the Sahrawis in the camps outside Tindouf have been granted legal status as refugees by Algeria, under the guidelines of the Convention, rights concerning their juridical status continue to be

¹⁵ "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria.", p. 54.
¹⁶ Ibid, p. 9.
¹⁷ "Anthropometric and Micronutrient Nutrition Survey." *UNHCR/WFP Micronutrient Project* (September 2002): 1-42, p. 7.
¹⁸ "Report of the Inspector General's Office" *UNHCR* (12 May 2005), <<http://www.cfi.org/hdocs/archives/UNHCR-IG-Report.pdf>>.
¹⁹ "Report of the Office of the Inspector General." *World Food Programme* (23 May 2005), <<http://www.cfi.org/hdocs/archives/WFP-IG-Report.pdf>>.
 Andersen, Erika. "The Polisario 'Berlin Wall'." *Human Events* (16 May 2008), <<http://www.humanevents.com/article.php?print=yes&id=26544>>.
 Buckley, Cara. "Western Sahara's Conflict Traps Refugees in Limbo." *The New York Times*

(4 June 2008), <http://www.nytimes.com/2008/06/04/world/africa/04saharah.html?_r=3&ref=africa&oref=slogin&oref=slogin&oref=slogin>.
 "Charge: Sahara Tribal Women Jailed For Adultery." *Women's eNews* (28 May 2008), <<http://www.womensenews.org/article.cfm/dyn/aid/3615/context/archive>>.
 "The Conditions of Detention of the Moroccan POWs detained in Tindouf (Algeria)." *France Libertés* (11-25 April 2003): 1-56, p. 34.
 "The forgotten tribes of the Sahara." *Middle East Times* (15 May 2008), <<http://www.meimes.com/>>.
 International/2008/05/15/the_forgotten_tribes_of_the_sahara/3891/>.
 "Sahara refugees' stories highlight hardships and propaganda war between rebels and Morocco." *International Herald Tribune* (16 May 2008), <<http://www.ihl.com/articles/ap/2008/05/16/americana/NA-CEN-US-Sahrawis-Woes.php>>.
¹⁹ Ibid.

work in the territory, such as a protective labor law, should be lifted once the refugee is present in the territory for three years. Article 18 further grants refugees the same right to be self employed as other foreign nationals.

Most refugees who are employed in any capacity in the camps work without compensation. For example, according to refugee reports, until recently, neither teachers in the camp schools nor police officials received any salary for the performance of their duties. In the camps poverty is magnified by the loss of property and the denial of the right to work in the host country. Without those rights, it is difficult, if not impossible, to become self sufficient. Refugees who have returned to Morocco from the camps report that to meet the basic needs of a family of four it is necessary to find up to \$300 each month to purchase basic foodstuffs, clothing, and medicines to make up for the persistent shortfall of food assistance from the international community. Technically, the Polisario controls employment within the region of the camps and Algeria controls it outside the camps. However, there are very few opportunities for official or self employment in the camps, and Algeria severely restricts the rights of foreign nationals to work outside of the camps. With few commercial opportunities available in the camps and no ability to work in the Algerian economy, the ability to find the money to survive becomes a daunting task for the majority of the camp's population.

The 1951 Convention specifies that refugees maintain this right, and clearly states in Article 17 (2) that host governments must drop all restrictive measures after a refugee has been in residence for three years.²⁴ The Algerian government has not done this and its policies for foreign nationals restrict employment rights and severely limit their rights to work. The 1981 Employment Workers Law and the 1983 Order of the Ministry of Labor allow only single employer work

²⁴ Massey, Traci L. "To Keep Water, Water: How we Missed the Mark with Côte d'Ivoire's Warehouse Refugees." *North Carolina Journal of International Law and Commercial Regulation* 31 (2005-2006): 207-254, p. 218.

permits, and then only for jobs for which no nationals, even those living abroad, are qualified. Under these laws, employers have to file justifications for the employment of foreign nationals; permits are valid for no more than two years, and the employee has no right to change jobs until his/her original contract is completed – and then only under exceptional circumstances.²⁵ The 1990 Labor Law reiterated this policy without an exception for refugees. Furthermore, a 2005 decree established regional labor inspection offices to enforce laws regulating the employment of foreigners, thus highlighting the extent to which the Algerian government monitors the labor market. Self employment could be an option for refugees, but in the Algerian refugee camps they have no access to land/infrastructure for such endeavors, no labor protection, and no social security. Refugees can also, in theory, work in the informal business sector, but they risk arrest and detention for working illegally. Thus the right to gainful employment in Algeria is quite precarious.

Welfare

As a result of restrictive employment policies and the inability of the Polisario to provide for the welfare of camp inhabitants, refugees are completely dependent on UNHCR, WFP, European Commission – Humanitarian Aid Office (ECHO), and other public and private humanitarian aid organizations for food aid and non-food needs. This includes support for health and nutrition, education, water, and sanitation. As a number of studies have indicated, this aid is inconsistent due to pervasive corruption, insufficient funding, WFP and UNHCR budget cuts, the global food crisis, and the global economic crisis. Consequently, there is a lack of potable water in the camps and there is severe, acute malnutrition among a large part of the population. According to USCRL, this number is as high as 39% among children under five. This is coupled with the reality that there are inadequate health care facilities to combat disease. It is reported by

²⁵ "Algeria." *United States Committee for Refugees and Immigrants*.

the award of a normal person. In Algeria, refugees are not granted any of the benefits listed in Article 24 merely by virtue of their limited employment rights. The lack of public relief and sufficient education facilities further highlights that Algeria and the Polisario Front are not observing refugee rights.

Freedom of Movement and Documentation

Algeria allows the Polisario complete jurisdiction and control over freedom of movement in, around, and between the camps. Freedom of movement is open within the camps themselves but controlled between the camps through Polisario and Algerian security check points, which are a violation of the Convention and Protocol. Algeria and the Polisario challenge this reality and claim that refugees' freedom of movement is not restricted, that there are no such violations, and that the Sahrawi are free to live normal, independent lives in Algeria and simply prefer not to in order to make a political statement. However, there is no explicit law guaranteeing Sahrawi refugees freedom of movement either in Algeria or in the camps. Nevertheless, the Polisario continues to make the argument that Tindouf camp residents are free to leave the camps any time, an issue taken at face value by Human Rights Watch's 2009 Report, which quotes the Justice Minister Hamada Selma as saying, "The Saharan refugees are free; they came to the camps by their own free will, and they are free to leave if they so wish. There are no legal or administrative measures that would prevent their departure."³⁰ The same report then goes on to quote some Sahrawis who said they had to obtain authorization to leave for Mauritania, and others who said that those who are seeking to leave for Morocco had to conceal their final destination in order to be given approval.³¹ If this is indeed the case, why should the international community subsidize the lives of those who choose to live in refugee camps as a political statement? If it is not

the case and freedom of movement is indeed restricted, a point recognized by both Amnesty International and USCRI, what is the reality on the ground?

Despite Polisario claims to the contrary, Sahrawi refugees' freedom of movement is severely restricted, both in Algeria and for travel to neighboring countries. In 2003, Amnesty International expressed grave concern about the denial of the refugees' right to freedom of movement by Algerian and Polisario authorities, citing that authorization was required to move even to other parts of Algeria. The briefing further notes, "Reports received by Amnesty International indicate that those refugees who manage to leave the refugee camps without being authorized to do so are often arrested by the Algerian military and returned to the Polisario authorities, with whom they cooperate closely on matters of security."³² USCRI has substantiated this evidence. Its World Refugee Survey has given Algeria a grade of F in freedom of movement and residence for the past three years, detailing that the Polisario forbids return to Moroccan-controlled Western Sahara and restricts movement to Algiers.³³ Moreover, the Algerian military guards the entrance into Tindouf, given its location as the southern headquarters for the Algerian Armed Forces, and often works in collaboration with the Polisario security forces to monitor and control movements through the checkpoints.³⁴ Refugees caught by Algerian authorities trying to leave the camps to return to neighboring Morocco or Mauritania, where most have close family, are routinely returned to Polisario authorities for punishment. Former camp refugees now living elsewhere recount incidents of refugees attempting to flee the camps being fired upon by both Polisario and Algerian police and security patrols, and also recount periods of imprisonment

³² "Algeria: Asylum-seekers fleeing a continuing human rights crisis: A briefing on the situation of asylum seekers originating from Algeria," *Amnesty International* MDE 26/007/2003 (1 June 2003): 1-20, p. 17.

³³ "World Refugee Survey," *United States Committee for Refugees and Immigrants* (2009): 1-66, p. 35.

³⁴ "Algeria," *United States Committee for Refugees and Immigrants* (2008).

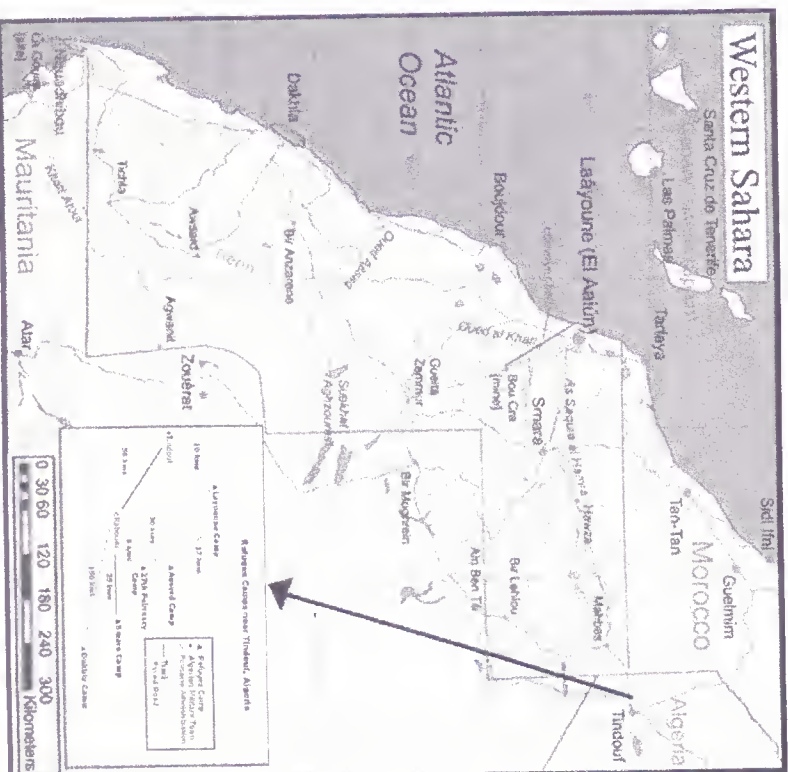
³⁰ "Human Rights in the Western Sahara and in the Tindouf Refugee Camps," *Human Rights Watch* (December 2008): 1-211, pp. 122-123.

³¹ *Ibid.*, pp. 126-127.

the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require." In particular, contracting states "shall give sympathetic consideration to the issue of such a document to refugees who are unable obtain a travel document from their country of lawful residence."³⁷ Failure to grant refugees freedom of movement and adequate documentation has severely limited the refugees' right to voluntary repatriation, a right defined both in the African Union Refugee Convention and the UNHCR mandate. The African Union Refugee Convention details that refugees have the right to voluntary repatriation, deeming that, "The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation...refugees who freely decide to return to their homeland shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return."³⁸ By obstructing the refugees' freedom of movement, the Polisario and Algeria have also significantly obstructed refugee rights to voluntarily repatriate.

³⁷ *Ibid*, Article 27.

³⁸ Convention governing the Specific Aspects of Refugee Problems in Africa.



Given these realities, Algeria, as a signatory to the Convention and Protocol, has not fulfilled its commitment to refugee protection. The Polisario is not a recognized state under international law so the responsibility for protecting the rights of the refugees is clearly with Algeria. By allowing the Polisario to control the Algerian territory on which the camps are located and its complicity in denying the refugees their most fundamental human rights, Algeria undercuts international law.

In addition to the Convention and Protocol, there is a wide range of other international law that applies to the refugees because of their civilian/citizen status, including international human rights law

1951 Convention and its 1967 Protocol; protecting refugees within broader migration movements; sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees; addressing security-related concerns more effectively; redoubling the search for durable solutions for refugees; and meeting the protection needs of refugee women and children.⁴⁰ Under the goal of protection, the UNHCR and states are to keep refugee children safe from forcible military recruitment by ensuring that they have access to education. Another objective that is of relevance to the specific needs of Sahrawi refugees is the Agenda's dedication to voluntary repatriation and the improvement of conditions to facilitate the process.

The UNHCR has built on the Agenda's initiative and continued to implement new programs designed to meet the specific protection challenges of today. The SPCP was established in 2004 to strengthen state and community capacities to protect refugees and other populations of concern.⁴¹ Working with UNHCR field offices and other partners, the SPCP begins by using gap analysis to determine the differences between the rights of refugees in the 1951 Convention and their actual situation in the host country. From this initial protection gap analysis, the SPCP seeks to build consensus among all stakeholders on measures needed to remedy the gaps and then works with stakeholders to develop and implement projects to address these gaps, with the ultimate goal of expanding access to rights, livelihoods, and solutions over the medium- and long-term.

The UNHCR has not yet launched a capacity project for Algeria, but the Sahrawi refugees could clearly benefit from such an initiative. Current projects in other countries include legislative reform to strengthen domestic refugee law, registration and documentation training to ensure compliance with international standards for identification, capacity building in health and education

⁴⁰ "Agenda for Protection," *UNHCR 3* (October 2003): 1-126, p. 10.

⁴¹ "Strengthening Protection Capacity Project," *United Nations High Commissioner for Refugees* (March 2008): 1-4, p. 1.

infrastructures, and the establishment of legal aid centers for refugees.⁴² All of these projects are extremely relevant to the situation in Tindouf and could go a long way in addressing many of the problems that plague Sahrawi refugees and contribute to the violation of their rights as refugees.

Another instrument of importance is the High Commissioner's Dialogue on Protection Challenges initiated in 2007 to facilitate informal consideration of global protection issues by the UNHCR, states, and other stakeholders.⁴³ While not a decision-making body, the Dialogue has provided a valuable means for informal discussion and has become quite relevant in that it allows for free and open debate among all stakeholders, often inspiring collaboration among the parties and new ways of thinking about refugee issues. The 2008 meeting on protracted refugee situations, which examined the challenges and opportunities for refugees and other stakeholders in camps, rural, and urban contexts, was particularly pertinent to the refugees in Tindouf. The discussion centered on the work of the UNHCR's Special Initiative on Protracted Situations, which aims to examine instruments that could "critically affect and unlock protracted refugee situations."⁴⁴ The Dialogue stressed the importance of collaboration and burden sharing, an issue of special importance given the presence of a wide variety of stakeholders at the meeting, including member states of EXCOM and observers to the Standing Committee, states with a special interest in the topic of protracted refugee situations, non-governmental and inter-governmental organizations, and refugee experts. The Dialogue also reiterated many of the issues raised in the Agenda for Protection: voluntary repatriation as a preferred durable solution, the enhancement of resettlement and local integration as alternatives, and

⁴² "Strengthening Protection Capacity Project," pp. 3-4.

⁴³ "High Commissioner's Dialogue on Protection Challenges," *United Nations High Commissioner for Refugees* (2008), <<http://www.unhcr.org/protection/4a12aaf2.html>>.

⁴⁴ "High Commissioner's Dialogue on Protection Challenges."

ensure that refugees are provided with documentation, especially in situations of large scale influx. Conclusion 35 was reiterated in Conclusion 49 of 1987, with EXCOM reaffirming the importance of travel documents and urging all states to take appropriate legislative or administrative measures to implement effectively the issuance of travel documents in line with the standards of the Convention.⁵⁰ The Final Act of the United Nations Conference on Plenipotentiaries on the Status of Refugees and Stateless Persons of 1950 also adopted recommendations calling on states to facilitate refugee travel through the issuance of travel documents, preserve the unity of the refugee family, provide welfare services, and promote international cooperation in the field of asylum and resettlement.⁵¹ Conclusion 18 (1980) calls on governments to provide repatriating refugees with necessary travel documents, visas, and entry permits in order to establish their nationality.⁵²

Issues of documentation are of particular concern in large-scale influx and protracted refugee situations. Conclusion 22 (1981) seeks to provide recommendations on the protection of asylum seekers in such situations.⁵³ EXCOM cites the necessity of ensuring the full protection of refugees and the enforcement of basic standards of treatment, including the full enjoyment of rights set out in the Universal Declaration of Human Rights and the provision of all necessary assistance including food, shelter, and basic sanitary and health facilities. Conclusion 22 goes on to stress that refugees in large-scale influx situations should enjoy free access to courts of law and other administrative authorities; that they should be located in areas a reasonable distance from the border so as to not be involved in subversive activities against their country of origin; that unity of the

family should be preserved; and lastly, that "all steps should be taken to facilitate voluntary repatriation."⁵⁴ The responsibilities of the Polisario Front and Algeria towards the refugees are clearly delineated in these conclusions, yet fulfilling those duties remains unanswered.

EXCOM Conclusions regarding Protracted Refugee Situations (PRS) are also pertinent to the case of the Sahrawi refugees in Algeria although the specific PRS initiative is targeted to a limited number of refugee situations depending on prospects for success, protection needs, host state perspective, and the costs and benefits. The Sahrawi refugees in Algeria have not been included in the PRS initiative even though it would appear that their situation warrants such treatment. Despite UNHCR's conservative approach to applying PRS to the Sahrawis, EXCOM conclusions provide a basis for the rights of refugees in such situations and PRS meetings provide a possible forum for UNHCR involvement in the future, if the Sahrawi refugees in Algeria could be established as a PRS under this initiative.

Conclusion 99 (2004) stresses "the fundamental importance of early registration as a key protection tool and the critical role of material, financial, technical, and human resources in assisting host countries in registering and documenting refugees and asylum seekers, particularly developing countries confronted with large-scale influxes and protracted refugee situations."⁵⁵ Yet Algeria has repeatedly declined to allow the UNHCR to conduct a census of the refugees in the camps and provide them valid international identity and travel documentation. Conclusions 100 (2004) and 102 (2005) stress the need for international cooperation among states and the UNHCR in addressing the specific needs of refugees in protracted situations. The June 2004 PRS Standing Committee Meeting noted that basic refugee rights remain unfulfilled after years in exile, and that refugees in these situations are unable to break free from enforced reliance on external

⁵⁰ "A thematic compilation of Executive Committee Conclusions," p. 144.

⁵¹ Final act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *United Nations* (1951), <<http://www.unhcr.org/3b66c2a10.html>>.

⁵² *Ibid.*, p. 446.

⁵³ *Ibid.*, p. 276.

⁵⁴ "A thematic compilation of Executive Committee Conclusions," p. 277.

⁵⁵ *Ibid.*, p. 373.

of refugee children.”⁶² It also reiterates the link between education and durable solutions, and encourages the UNHCR to strengthen its efforts in assisting host-country governments to ensure the access of refugee children to education. Conclusion 87 calls upon states to respect and observe rights and principles in accordance with international human rights and humanitarian law, especially for safeguarding child and adolescent refugees, including the rights of children to education, adequate food, and the highest standards of health, and the rights of children affected by armed conflict to special protection from risks of exploitation.⁶³ It urges states to prevent family separation, safeguard the physical security of children by taking steps to preserve the civilian character of camps, and by ensuring access to education. Conclusion 102 (2005) stresses the importance of refugee childhood education in line with the Millennium Development Goals and reiterates the necessity of early and effective registration in promoting protection for refugee children.⁶⁴ Conclusion 107 (2007) reinforces the importance of putting the child’s best interests first via preventing family separation, enhancing the use of resettlement as a protection and durable solutions tool, and using a rights-based approach to protect the needs and international rights of children.⁶⁵ This includes providing children with individual documentation and taking the appropriate measures to prevent the recruitment of children for military purposes.⁶⁶ Conclusion 107 also emphasizes the need to address food insecurity and malnutrition by adopting programs to closely monitor food distribution, creating targeted nutrition programs for children and women, and reinforcing self-reliance initiatives.

Each of the conclusions noted here have specific application to the Sahrawi children in the Algerian camps. There are very limited educational opportunities available to children in these camps where

the third and potentially fourth generation of children now live after their families have been warehoused for more than 30 years. Family separation issues are also especially important as many families in the camps have been split apart over the past three decades with different elements of the nuclear family living either in the camps, in Morocco or elsewhere. The UNHCR family visit program between the camps and Morocco was designed to help alleviate some of the family issues caused by these long-term separations, but the very limited nature and availability of the program has hardly made a dent in the need for family reunification. More than 12,000 people in the camps and in Morocco are still on waiting lists to participate. At current rates, it would be another decade, at a minimum, before these families could enjoy even a single visit with their immediate family members from whom they are separated.

With regard to women, Conclusions 39 (1985), 54 (1988), and 64 (1990) stress the need to take all necessary measures to ensure that women receive adequate protection, both physically and materially, through self-sufficiency programs and education.⁶⁷ Recognizing that women in refugee camps need special protection, EXCOM urges states to target programs especially for women consistent with their rights under The 1979 Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and other international human rights bodies. Conclusion 105 (2006) focuses on specific actions to ensure the protection of women and girls who face particular problems in exercising their rights because of their gender. EXCOM recommends a wide range of protection strategies to states since they hold primary responsibility for protecting women and girls, including the strengthening of identification, assessment, and monitoring programs relating to the risks faced by women and girls in the wider protection environment, the individual documentation of refugee women, and the establishment of codes of conduct in camps to protect

⁶² *Ibid.*, p. 77.

⁶³ “A thematic compilation of Executive Committee Conclusions,” p. 218.

⁶⁴ *Ibid.*, p. 80.

⁶⁵ *Ibid.*, p. 75.

⁶⁶ *Ibid.*, pp. 90-91.

⁶⁷ “A thematic compilation of Executive Committee Conclusions,” pp. 495-499.

warehousing and declared that anti-warehousing campaigns should be linked to poverty reduction strategies and the Millennium Development Goals. Acknowledging that innovative measures were required to ensure that refugee needs are met, the summary record stated that, "regional partnerships between advocates, NCOs, refugees, and the UNHCR should be consolidated so as to resolve protracted refugee situations. Refugee communities must be empowered to have some autonomy in camps. Self reliance should be encouraged as early as possible and the failure to do so by states should be addressed." As evidenced by this summary record, the goals of the refugee warehousing campaign are unquestionably linked to the UNHCR's objective of finding durable solutions.⁷³ While all of these initiatives certainly show great effort on the part of the UNHCR, they all suffer from the same fundamental problem: lack of enforceability and political will on the part of the UNHCR to confront uncooperative states and to seek political assistance of other Contracting States to pursue necessary initiatives to end these long term warehousing situations. This also remains the case with international human rights law and international humanitarian law – two other potentially useful instruments to promote refugee rights.

⁷³ "Summary Record of the 597th Meeting," *Executive Committee of the Programme of the United Nations High Commissioner for Refugees A/AC.96/SR.597* (25 October 2005): 1-15, p. 10.

INTERNATIONAL HUMAN RIGHTS LAW, INTERNATIONAL HUMANITARIAN LAW, AND THE PROTECTION OF REFUGEES

The 1948 Universal Declaration of Human Rights is the primary source of human rights standards and confers several important rights also granted in the Convention and Protocol. Article 13 of the Universal Declaration protects freedom of movement as follows: 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state; 13 (2) Everyone has the right to leave any country, including his own, and to return to his country;⁷⁴ Articles 15 states that everyone has a right to a nationality and that no one shall be denied the right to change his nationality. Article 17 grants people the right to own property, and Article 20 guarantees right to freedom of association. Article 23 establishes the basic right to work, to just and favorable conditions of work, and to protections against unemployment. Article 25 states that everyone has the right to secure an adequate standard of living including food, clothing, housing, medical care, and necessary social services; and Article 26 states that everyone has the right to education. Algeria is a signatory of the Declaration.

The 1966 International Covenant on Civil and Political Rights (ICCPR) further strengthens the rights clarified in the Universal Declaration, and reaffirms the rights specifically guaranteed to refugees in the 1951 Convention and 1967 Protocol. Article 12 protects the right to freedom of movement, but does not regard it as an absolute right: 12 (1) Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence; 12 (2) Everyone shall be free to leave any country, including his own; 12 (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to the protection of national security, public order, public health, morals, or the rights or freedoms of others, and are consistent

⁷⁴ Universal Declaration of Human Rights, Article 13. *United Nations* (1948).

refugees? The primary legal instrument of international humanitarian law, the Geneva Conventions of 1949 and their additional protocols contain only a few provisions relating to refugees. Since most refugees are civilians, they are protected by laws pertaining to civilians during wartime. Common Article 3 of the Geneva Conventions protects civilians ("persons taking no active part in hostilities") from indiscriminate violence and states that in all circumstances they shall be treated without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.⁸² This article has relevance if refugees/civilians with contrary political views to those of the leadership, are treated discriminatorily. Article 17 of Additional Protocol II prohibits the displacement of the civilian population for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.⁸³ These Articles may have special relevance in those cases where refugees claim to have been forcibly relocated to the camps by the Polisario. Despite existing eyewitness testimony, it is difficult to determine the number of those who were forcibly moved into the camps because of the lack of unfettered access to the refugees in the camps.

In conclusion, international human rights and humanitarian law provide viable tools for reinforcing refugee law and making a stronger case for the shared responsibility in the denial and non-enforcement of the rights of the Sahrawi refugees. The state actor (Algeria), the non-state actor (the Polisario Front), and the inter-governmental agency (the UNHCR), all have specific obligations under the laws discussed in this section that are being inadequately observed and often ignored. The UNHCR, by not only failing to protect refugees, but also failing to forthrightly acknowledge the gaps between the requirements of the 1951 Convention and the treatment of the Sahrawi refugees in Algeria, must accept some of the responsibility and change its current policies accordingly.

⁸² Bugnion, pp. 37-38.

⁸³ *Ibid*

UNHCR RESPONSIBILITIES AND FAILURES

In assessing the responsibility and failures of the UNHCR in the situation of the Sahrawi refugees in Algeria, it is necessary to view its policies in light of its mandate. The primary function of the UNHCR, under its mandate, is "to provide international protection aimed at safeguarding the rights and legitimate interests of refugees."⁸⁴ The UNHCR was also specifically mandated to facilitate durable solutions to refugee problems through one of three methods: repatriation to their country of origin when conditions were permitting, resettlement in a third country or integration into the society of the host country. Material assistance was to be distributed only as host governments requested and then only with the approval of the UN General Assembly. In choosing to focus on humanitarian relief and refugee material needs rather than refugee protection and rights, the UNHCR has not observed its initial mandate of rights promotion, and has avoided dealing with the political, economic, and social environment in which it works.⁸⁵ Further, the UNHCR has neglected its mandate to work towards a durable solution through the approved methods in the mandate with respect to the Sahrawi refugees in the Algerian camps. The UNHCR makes no effort to identify or facilitate the return to Morocco of those refugees who might wish to exercise this option. Evidence indicates that the UNHCR has made no visible attempt to persuade Algerian authorities to allow the refugees to settle elsewhere in Algeria outside the camps, and very few Sahrawi refugees have been resettled elsewhere with the exception of those who were able to establish some other nationality or successfully applied for humanitarian residence status – mostly in Spain.

While the UNHCR has indeed been constrained by states and their lack of political will, the notion that it is a passive mechanism with no independent agenda is incorrect.⁸⁶ Even though respect for

⁸⁴ Smith, "Development," p. 1481.

⁸⁵ *Ibid*, p. 1483.

⁸⁶ Loescher, Gil. "The UNHCR and World Politics: State Interests vs. Institutional

the UN Human Rights Council that the Polisario diverted and sold aid to other countries and spent lavishly on military parades and festivals, which contribute to their ability to maintain control over the population in the name of national unity and self determination.⁹² The Polisario not only uses aid distribution as a means of social and political control, but humanitarian aid has also allowed the Polisario to use its own income for other purposes, rather than for caring for its population. This situation begs the question: Is aid supporting the Polisario or the refugees? If it is the former, then the UNHCR and WFP bear important responsibility for fulfilling their mandates, protecting the refugees, and at least minimizing the abuse and fraud in the aid system.

Militarization and Politicization of the Camps

The UNHCR has allowed the camps to be militarized by the Polisario. As Michael Van Bruane, a scholar who published an article on Tindouf as a protracted refugee situation for the UNHCR's Evaluation and Policy Analysis Unit, has noted with reference to Sahrawi refugees, "Tindouf was obviously selected for political and military, rather than humanitarian reasons. In some protracted situations, elderly, charismatic, and historical leadership tend to embody rigid political agendas, needlessly detrimental to the well being of their own vulnerable population...A good example is that although Tindouf is totally unsuitable for the support of a refugee population, any idea of temporary scattering to more fertile areas is unmentionable."⁹³

There is a notable Algerian army and air force presence throughout the region as well as Polisario military encampments, which violate the UNHCR's mandate to maintain the humanitarian

and civilian character of the camps.⁹⁴ Algerian police and security forces work in cooperation with the Polisario on guarding the camps and controlling freedom of movement. It is a violation of international law when authorities prevent repatriations and maintain power in the camps through the control over valuable resources.⁹⁵ While armed conflict has been suspended since 1991, the possibility of future security issues arising from the militarization of camps cannot be overlooked. This is especially troubling in that the Polisario continues to threaten a resumption of hostilities, which requires diverting limited resources to military purposes. As Gil Loescher, a Visiting Professor at the Refugee Studies Centre at the University of Oxford, has noted, "Relief supplies provided by humanitarian organizations can feed war economies, thus helping to sustain and prolong war."⁹⁶

Furthermore, according to a review by the Immigration and Refugee Board of Canada, during the war against Morocco, the Polisario recruited boys age 12 to 17 for educational and military training. At age 17, boys were forcibly recruited into the armed forces. The Polisario claims that following the ceasefire, conscription was voluntary, but the fact remains that military recruitment did occur in camps under the watch of the UNHCR.⁹⁷ According to a USCRI country report from 2008, as well as credible eyewitness testimony from refugees who have fled the camps within the last two years, the Polisario maintains this system of forced military training, both in Tindouf and Cuba, which is again in breach of international covenants.⁹⁸

⁹⁴ Bhatia, p. 291.

⁹⁵ Jacobsen, Karen. "A Framework for exploring the political and security context of refugee populated areas." *Refugee Survey Quarterly* 19:1 (2000): 3-21, p. 9.

⁹⁶ Loescher, p. 45.

⁹⁷ "Algeria: Whether the Polisario had mandatory military service; whether the Sahrawis in the camps near Tindouf need permission from Polisario to leave town; if so, consequences if some leave without permission (1991-2000)." *Immigration and Refugee Board of Canada DZA34602.E* (18 July 2000): 1-2, p. 2.

⁹⁸ "Algeria." *United States Committee for Refugees and Immigrants*.

⁹² "Algeria." *United States Committee for Refugees and Immigrants*.

⁹³ Smith, "Warehousing Refugees," p. 49.

the refugee population and provide individual refugee identification, as is the norm in most similar cases of refugees who are being warehoused in camps on a long-term basis. However, both Algeria and the Polisario Front have refused to allow the UNHCR to go forward with a documentation process. The UNHCR has, to date, failed to bring this clear violation of refugee rights to the attention of the Security Council with a formal request for assistance to move the project forward. As a safety measure, providing documentation gives some measure of protection for refugees from possible abuse by the authorities who have jurisdiction over them. This is especially the case when local authorities undertake strict measures to ensure conformity with the objectives of a group, such as the Polisario Front. Beyond this critically important security consideration, documentation for individual refugees is also essential for the UNHCR, the WFP, and other international relief organizations to determine how many refugees need adequate food and non-food humanitarian assistance. The waste, fraud, and abuse of relief being provided to Sahrawi refugees in Algeria over the last three decades is well documented in the Inspector General reports noted earlier in this report, and has also been documented by individual accounts of refugees who have fled the camps as well as other international humanitarian relief and human rights organizations. One such independent report, completed by France Libertés, reviewed both the situation of the Moroccan prisoners of war held by the Polisario Front and the fraud involved in the provision of relief to the refugees.¹⁰¹ Again, despite widespread knowledge of this abuse among both public and private relief organizations, neither the UNHCR nor the WFP have sought the assistance of the Security Council to protect supplies for the refugees through transparent operations and documentation.

¹⁰¹ "The Conditions of Detention of the Moroccan POWs detained in Tindouf (Algeria)."

STATE RESPONSIBILITY: ALGERIA

Ultimate responsibility for the status of the refugees rests with state actors, as the provisions of international treaties and customary international law find outlets in national legislation. The primary actors in enforcing refugee law are states themselves, which may often be those guilty of creating the initial refugee situations. Refugees, therefore, even under international law, are subject to the political will of states, even though, in theory, under law they are entitled to international protection from such states. Algeria has consistently derogated from its responsibilities under international law by claiming that it does not hold authority over the camps, since it granted administrative territorial jurisdiction over the camps to the Polisario in 1976. The legality of this decision under international law is tenuous and unclear, since *jus cogens* for the recognition of governments/non-state actors has not yet been established. However, it is clear Algeria has a moral and likely also a legal duty to care for persons living within their defined international legal borders, and it has a duty to protect them from human rights violations perpetrated in its territory.

In terms of its responsibilities under international law, Algeria did legally accept Sahrawi refugees into its territory. A 1963 decree established the Algerian Office for Refugees and Stateless Persons (BAPRA), located in the Ministry for Foreign Affairs. While it originally requested guidance from the UNHCR, BAPRA never followed through on the request. BAPRA stipulates its recognition of those groups the UNHCR has already recognized. With regard to the Sahrawi refugees, Algeria admitted them on a *prima facie* basis. It is important to note that under international law, the basis for granting such status is to provide refugees with immediate protection and humanitarian aid in situations of mass influx.¹⁰² Algeria's recognition, therefore, granted refugees the rights and protections entitled to them under international law. There

¹⁰² Rutinwa, Bonaventure, "Prime *facie* status and refugee protection," UNHCR Working Paper 69 (October 2002): 1-27, p. 1.

refugees whose tribal origins are in the region surrounding Tindout and who are currently living in the camps in Algeria may also have a legitimate claim to Algerian nationality. Algeria granted nationality to most Sahrawis whose origins were in this region following the withdrawal of French colonial forces. It did so in an attempt to buttress its own territorial claim to a region that had few internationally recognized boundaries other than those established by French and Spanish colonial authorities in the region. In 1966, Algeria updated its own civil registry for the region based on civil documentation that had been provided by the departed French colonial authorities and the civil documents that had been issued by local Algerian authorities since the departure of the French colonial administration. Some Sahrawis who were aware of this and who had been living in the camps subsequently were able to obtain Algerian national identification documents as well as an Algerian passport and use this documentation to leave Algeria and return to Morocco. However, the number of refugees in the camps who might be in similar circumstances cannot be known without a reliable census, documentation of the camp residents, and open access to Algerian civil registry documentation.

Under the convention, Algeria is required to collaborate with the UNHCR and enforce its recommendations. Article 35 states that “Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the applications of the provisions of this Convention,” including the provision of reports and statistical data regarding the condition of refugees, the implementation of the Convention, and laws, regulations, and decrees relating to refugees.¹⁰⁸ Algeria is thus responsible for doing everything in its capacity to support the UNHCR and thereby fulfill its obligations under international refugee law. Doing so is vital to the well being of Sahrawi refugees because “most of the legal and social

disabilities suffered by refugees can only be overcome by state action – by changes in domestic law and in administrative practice.”¹⁰⁹ Despite its denials, under international law, Algeria, as a state, is responsible for the welfare of the Sahrawi refugees in its territories.

What is most remarkable about this situation is that Algeria has already supplied its own solution to refugee integration and resettlement for one group of refugees living within its borders: Palestinian refugees. Unfortunately, this solution has only been applied to 4,000 Palestinian refugees in Algeria and not to the Sahrawi population. Unlike the Sahrawis, the Palestinian refugees in Algeria have been fully integrated into Algerian society. As a result, they have required neither humanitarian aid nor international legal protection from the UNHCR.¹¹⁰ The Palestinian refugees have been able to integrate because they have been treated quite favorably by Algerian authorities, granted access to the labor market under a special policy, and allowed freedom of movement within Algerian territory. Why should the Sahrawi refugees be treated any differently? Algeria clearly has the capacity to implement reform and grant the Sahrawi refugees the rights they are due under international law, but it has lacked the political will to do so and instead has chosen to place responsibility solely upon the United Nations. The recommendations outlined in this paper are achievable, and both Algeria and the UNHCR have the capacity to enforce and protect Sahrawi refugee rights. They must be urged to do so, not only for the benefit of the Sahrawi refugees, but also to ensure that international humanitarian aid can be used more wisely.

¹⁰⁹ Lewis, Corrine, “UNHCR’s Contribution to the Development of International Refugee Law: Its Foundations and Evolution,” *International Journal of Refugee Law* 17:1 (March 2005): 67-90, p. 86.

¹¹⁰ “Algeria,” *United States Committee for Refugees and Immigrants*.

¹⁰⁸ Convention relating to the Status of Refugees, Article 35.

international resources for political means. The UNHCR must also reconstitute its humanitarian approach into a rights-based approach that bridges the gap between relief and development to ensure the realization of all refugee rights. Under its obligations to collaborate with the UNHCR, Algeria must remove all obstacles standing in the way of this rights-based approach, including its opposition to the census and the issuing of status documentation, its continued support for Polisario jurisdiction over the camps, and its military cooperation with the Polisario that contributes to restrictions on freedom of movement. The UNHCR must be allowed to establish a voluntary repatriation program free of intimidation for those Sahrawi refugees who might wish to return to Morocco or settle elsewhere. It must also actively work to reform national legislation in line with its obligations under international law. Sahrawi refugees must not continue to suffer for the failures of the UNHCR, Algeria, and the Polisario. It is legally, morally, and financially imperative that the Sahrawi refugees in Algeria be granted all of the rights to which they are entitled under international law, so that they do not have to live as warehoused refugees for another 30 years.

WORKS CITED AND CONSULTED

- Abdi, Awa M. "In Limbo: Dependency, Insecurity, and Identity amongst Somali Refugees in Dadaab Camps." *Refugee* 22:2 (2005): 6-14.
- Adelman, Howard. "From Refugees to Forced Migration: The UNHCR and Human Security." *International Migration Review* 35:1 (Spring 2001): 7-32.
- "Agenda for Protection." *UNHCR* 3 (October 2003): 1-126.
- Alexander, Michael. "Refugee Status Determination Conducted by UNHCR." *International Journal of Refugee Law* 11:2 (1999): 251-289.
- "Algeria." *UNHCR Global Appeal 2009 Update* (2009): 230-233.
- "Algeria." *United States Committee for Refugees and Immigrants* (2008), <<http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=2116>>.
- "Algeria: Asylum seekers fleeing a continuing human rights crisis: A briefing on the situation of asylum seekers originating from Algeria." *Amnesty International* MDE 28/007/2003 (1 June 2003): 1-20, p. 17.
- "Algeria: Country Operations Plan." *UNHCR* (2006): 1-8.
- "Algeria: Sahrawian refugees facing their future." *European Commission Humanitarian Aid Office* (18 August 2007), <http://ec.europa.eu/echo/aid/north_africa_mid_east/algeria_en.htm>.

- Convention on the Rights of the Child. *United Nations* (1989).
- Crisp, Jeff. "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process." *International Migration Review* 35:1 (Spring 2001): 168-191.
- Crisp, Jeff. "No solutions in sight: the problem of protracted refugee situations in Africa." *UNHCR Working Paper* 75 (January 2003): 1-36.
- DeJong, Cornelis. "The Legal Framework: The Convention relating to the Status of Refugees and the Development of Law Half a Century Later." *International Journal of Refugee Law* 10:4 (1998): 688-699.
- Doek, Jaap E. "The CRC and the Right to Acquire and to Preserve a Nationality." *Refugee Survey Quarterly* 25:3 (2006): 26-32.
- Dukic, Natali and Alain Thiery. "Sahrawi Refugees: Life After the Camps." *Forced Migration Review* 2 (August 1998): 18-21.
- "Executive Committee Mandate." *UNHCR*, <<http://www.unhcr.org/excom/400e3c86a.html>>.
- "The forgotten tribes of the Sahara." *Middle East Times* (15 May 2008), <http://www.metimes.com/International/2008/05/15/the_forgotten_tribes_of_the_sahara/3891/>.
- "Guiding Principles on Internal Displacement." *United Nations* (1998), <<http://www.unhcr.ch/html/menu2/7/b/principles.htm>>.
- Harvey, Colin and Robert P. Barnidge, Jr. "Human Rights, Free Movement, and the Right to Leave in International Law." *Global Commission on International Migration* (September 2005): 1-21.
- "High Commissioner's Dialogue on Protection Challenges." *United Nations High Commissioner for Refugees* (2008), <<http://www.unhcr.org/protection/4a12aafc2.html>>.
- Horst, Cindy. "Refugee Livelihoods: Continuity and Transformations?" *Refugee Survey Quarterly* 25:2 (2006): 6-22.
- "Human Rights in the Western Sahara and in the Tindouf Refugee Camps." *Human Rights Watch* (December 2008): 1-211.
- International Covenant on Civil and Political Rights. *United Nations* (1966).
- International Covenant on Economic, Social, and Cultural Rights. *United Nations* (1966).
- Islam, M. Raïguil. "The Sudanese Darfur Crisis and Internally Displaced Persons in International Law: The Least Protection for the Most Vulnerable." *International Journal of Refugee Law* 18:22 (2006): 354-385.
- Jacobsen, Karen. "A framework for exploring the political and security context of refugee populated areas." *Refugee Survey Quarterly* 19:1 (2000): 3-21.
- Juss, Satvinder S. "Free Movement and the World Order." *International Journal of Refugee Law* 16:3 (2004): 289-335.
- Kelley, Ninette and Jean-Francois Durieux. "UNHCR and Current Challenges in International Refugee Protection." *Refugee* 22:1 (2004): 6-17.
- Lewis, Corinne. "UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution." *International Journal of Refugee Law* 17:1 (March 2005): 67-90.

"Statute of the Office of the United Nations High Commissioner for Refugees." *UNHCR* (1950).

"Summary Record of the 597th Meeting." *Executive Committee of the Programme of the United Nations High Commissioner for Refugees*, A/AC.96/SR.597 (25 October 2005): 1-15, p. 10.

"A thematic compilation of Executive Committee Conclusions." *UNHCR* (August 2008): 1-515.

Universal Declaration of Human Rights. *United Nations* (1948).

Wolson, Steven. "Refugees and Transitional Justice." *Refugee Survey Quarterly* 24:4 (2005): 55-59.

"Warehoused Refugee Populations." *United States Committee for Refugees and Immigrants* (2008). <http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRSArc_hives/2008/warehoused%20refugee%20populations.pdf>.

"World Refugee Survey." *United States Committee for Refugees and Immigrants* (2009): 1-66.